

Message

From: Feinmark, Phyllis [Feinmark.Phyllis@epa.gov]
Sent: 8/30/2022 12:48:44 PM
To: Garcia, Lisa [Garcia.Lisa@epa.gov]; Mugdan, Walter [Mugdan.Walter@epa.gov]; Laureano Perez, Javier [laureano.javier@epa.gov]; Arcaya, Alyssa [arcaya.alyssa@epa.gov]; Wong, Virginia [Wong.Virginia@epa.gov]; Jackson, Wayne [Jackson.Wayne@epa.gov]
CC: Simon, Paul [Simon.Paul@epa.gov]
Subject: NYC WQS litigation - meeting September 7?

Hi all – It is time to catch up with the environmental groups on the NYC WQS litigation. After our August 8 meeting with the plaintiffs, the parties agreed to submit a letter to the court. This letter, submitted by the US Attorney's Office with the consent of all parties (NYC did not take a position), informed the Court that the EPA rule had completed OMB review as of July 25. It went on to state that NYSDEC had published, on July 27, an advanced notice of proposed rulemaking (ANPRM) seeking information that NYSDEC would rely on to analyze the uses of those waters, and based on those analyses, propose and finalize NYSDEC rules setting out appropriate uses and water quality criteria for the waters. We asked the court to allow us the time to continue the discussions with the plaintiffs, by holding in abeyance any action on the parties' pending cross-motions for summary judgment as well as NYSDEC's motion to amend its answer to assert a cross-claim against EPA until **September 16, 2022**. We also proposed that the parties would submit a joint status letter to the Court on or before **September 14, 2022**. The Court granted this request on August 12.

Ex. 5 Attorney Client (AC)

I am sending a request for the meeting on September 7 with the plaintiffs. **Ex. 5 Attorney Client (AC)**

Ex. 5 Attorney Client (AC)

From: Ommen, Todd D. <tommen@law.pace.edu>

Sent: Tuesday, August 16, 2022 12:45 PM

To: Onozawa, Tomoko (USANYS) <TOnozawa@usa.doj.gov>

Cc: Mike Dulong <mdulong@riverkeeper.org>; Levine, Larry <llevine@nrdc.org>; Roger Reynolds <rreynolds@savethesound.org>

Subject: [EXTERNAL] RE: WQS Lawsuit/SD and I waters

Tomoko, below are the topics we'd like to discuss. Subject to FRE 408 of course.

1. Milestones: We'd like to discuss the concept, and how they'd be enforceable.
2. We want to confirm that EPA's position is that all SD and I waters are currently primary contact recreation waters, so any designation of any waterbody or segment as something below primary contact recreation requires a UAA. This seemed clear from the meeting, but we wanted some confirmation.
3. We want to confirm that we will have an actual seat at the table and are not just viewing the actions as they unfold, and what that would entail.
4. We want to know if EPA will require all regulation adopted by DEC in this context be submitted to EPA for review and approval.
5. We want to discuss the requirement of an ability to pay full analysis for any degradation of water quality.
6. We would like gauge EPA's willingness to including the LTCPs in our discussions.

Thanks,

Todd

Todd D. Ommen

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Ex. 5 Attorney Client (AC)

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Many thanks,
Tomoko

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